



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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Governor

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June 22, 1995

Larry Maycock
50 S 300 W
Minersville, Ut 84752

Re: Rocky Ford Irrigation Company

Dear Larry:

I am sorry it has taken me so long to respond to you. After our telephone conversation on June 1, I reviewed the copy of the 1953 agreement that you sent me by facsimile. As far as I can tell, we do not have a copy of it on our distribution files. Also, we cannot find any evidence that the agreement was ever decreed by the court. It appears to be a stipulation among water users describing their agreement about how water should be distributed between their respective rights.

It is difficult to say whether the agreement was signed, the printing in both signature blocks appears to have been written by the same hand. However, assuming it is valid, the agreement would have the same authority as any other stipulation among water users. The state engineer would rely on it in distributing water between the parties as long as both parties continued to agree to live by its conditions. There is no penalty if either party decides not to abide by the agreement. Before we would be willing to instruct the commissioner to distribute water according to the agreement, both parties would need to send a written statement to the state engineer re-confirming their acceptance of the terms of the agreement and we would need to assure ourselves that other earlier or equal priority water rights would not be impaired.

We are concerned, however, that the terms of the agreement seem to be considerably different than directions given in the Beaver River Decree. Page 54 of the decree states:

"That the users from the Beaver River below the Patterson Dam shall not be entitled to demand any water from above said dam during the irrigation season from April 1st to October 31st until the rights herein decreed to the users from said river at and above said dam have first been satisfied in the amount of 161.35 c.f.s. and until the storage rights of the Kents Lake Reservoir Company and Beaver City in the Kents Lake Reservoir and the South Bench Reservoir and Irrigation Company's storage right in Twin Lake Reservoir as herein decreed have first been satisfied; ... " (bold and underline added)

Larry Maycock
Rocky Ford Irrigation Company
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This paragraph appears to dictate that both direct flow rights up to 161.35 cfs and the storage rights are to be filled before water is to be bypassed for storage in Minersville Reservoir.

I hope this clarifies the State Engineer's position on this issue. If you have any other questions concerning it, please contact me at 538-7380.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee H. Sim".

Lee H. Sim, P.E.
Assistant State Engineer
for Distribution

cc: Kerry Carpenter
Ron Roberts

(1) THIS MEMORANDUM AGREEMENT made at Salt Lake City, Utah, this 1st

day of April, 1953, by and between the ROCKY FORD IRRIGATION COMPANY, a Utah corporation, with its principal place of business in Beaver County, Utah, hereinafter called "Rocky Ford", and KENT'S LAKE RESERVOIR COMPANY, a Utah corporation, with its principal place of business in Beaver County, Utah, hereinafter called Kent's Lake",

WITNESSETH:

WHEREAS, Rocky Ford has various rights to the use of water of the Beaver River and its tributaries, including Application No. 1215, Certificate No. 2388, issued by the State Engineer of the State of Utah; and

WHEREAS, Kent's Lake has various rights to the use of the waters of the Beaver River and its tributaries, including a right decreed by the District Court of Beaver County on November 13, 1931, in Civil Case No. 625, entitled "Hardy et al, v. Beaver County Irrigation Co., et al", to store 1660 acre feet of water (830 acre feet of which was changed to Three Creeks Reservoir site by Change Application No. Q-1413), and Application No. 13420 for 1193 acre feet; and

WHEREAS, certain of the stockholders of Kent's Lake are the owners of various decreed rights to use water from the Beaver River system by direct flow rather than from storage; and

WHEREAS, the priority date of the water right of Kent's Lake for its said 1660 acre feet is 1890, and the priority date of Rocky Ford under its Certificate No. 2388 for 25,447.5 acre feet is February 25, 1907, and the priority date of Kent's Lake's Application No. 13420 for 1193 acre feet is March 8, 1940, and the priority dates of the direct flow rights of the various stockholders of Kent's Lake referred to herein have priority dates of 1890 and earlier; and

WHEREAS, the parties hereto desire to provide for the practical administration of storage under the water rights mentioned above and to prevent future controversy concerning the diversion for storage under said water rights;

NOW, THEREFORE, in consideration of the mutual promises and coven-

ants contained herein, and of the premises, and of other good and valuable consideration, the parties mutually agree as follows:

1. That the various stockholders of Kent's Lake who have direct flow rights in the Beaver River desire to file with the State Engineer of the State of Utah appropriate change applications designed to secure the right to store under said rights, if they so elect, not to exceed 1193 acre feet of water per annum in the existing Kent's Lake Reservoir on the Beaver River System at Three Creeks.

2. Rocky Ford agrees that so long as said change applications of said Kent's Lake stockholders are filed subject to the terms hereof, it will not protest said attempt to secure the right to store water accruing under said direct flow rights in the Three Creeks Reservoir.

3. If said right to store up to 1193 acre feet of water accruing under the direct flow rights in Kent's Lake's Three Creeks Reservoir can be perfected, Kent's Lake or its stockholders can in their discretion store water under said change applications or utilize the same under existing rights by direct flow.

4. After the Beaver River at the U.S.G.S. measuring station at the mouth of the Beaver Canyon reaches a flow of 161.31 c.f.s., Kent's Lake may store, in addition to storage under its direct flow rights, as set forth in paragraph 3 hereof, in its Three Creeks Reservoir all water available to it at that point until its reservoir is filled, or until it has stored 830 acre feet, under its above described decreed storage rights, as changed by application No. a 1413, whichever occurs first. Thereafter Kent's Lake will make no further storage in Three Creeks (except under its direct flow rights) unless and until Rocky Ford has diverted for storage in its Rocky Ford Reservoir on the Beaver River sufficient water so that it would have filled up to the 48 foot contour line, which has an impounding capacity at that level of 20,120.3 acre feet. Thereafter Kent's Lake and Rocky Ford may from the combined water available to them, under their combined rights, for storage, each store on

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a ratio of 15 feet to Kent's Lake for each acre feet stored by Rocky Ford. It is mutually acknowledged that there may not be sufficient water available to Kent's Lake at its Three Creeks Reservoir at any given time to permit it to store on a full ratio of 15 acre feet to Kent's Lake for 85 acre feet for Rocky Ford, in which event Rocky Ford may nevertheless store all water available to it. However, at such times as water is available, after (a) the flow of the Beaver River at the U.S.G.S. measuring station at the mouth of Beaver Canyon has reached a flow of 161.31 c.f.s., or more, so that storage rights of the parties are entitled to water, and (b) Kent's Lake has filled its Three Creeks Reservoir, or until in addition to storage under direct flow rights it has stored in its Three Creeks Reservoir 830 acre feet, (its decreed storage right) and (c) there has been diverted into and impounded for storage in the Rocky Ford reservoir sufficient water so that it would have filled to the 48 foot contour, then the parties hereto may store in their reservoirs in the ratio of 15 acre feet to Kent's Lake and 85 acre feet to Rocky Ford, and Kent's Lake agrees that it will release through the Three Creeks Reservoir all water above that to which it is thus entitled. Kent's Lake agrees that after it has filled its reservoir once during a season, that it has no right as against Rocky Ford to refill. Rocky Ford agrees that the proration on the basis set forth above will start when the water in storage at the beginning of the season (November 1st of each year), together with storage during the current season would have caused the water to reach the 48 foot contour had there been no useage from the reservoir.

5. It is mutually acknowledged that Rocky Ford contemplates the enlargement of its reservoir, and Kent's Lake agrees that it will not oppose such enlargement.

6. Rocky Ford has exclusive right to store all water available to it from November 1st of one year to the following April 1st.

7. Water being diverted into storage in lieu of direct flow rights at Three Creeks after April 1st of each year shall be added to the flow of the river at the U.S.G.S. measuring station at the mouth of Beaver Canyon.

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to determine when the flow has reached or is above 161.31 c.f.s.

Signed the day and year set forth above.

ROCKY FORD IRRIGATION COMPANY

By E. D. Williams
Its

KENT'S LAKE RESERVOIR COMPANY

By S. Taylor Foreman
Its